

61-1531



Eastside Pioneers Neighborhood Association

2/2

neighbors helping neighbors
vecinos ayudando a vecinos

1143 3 1/2 St. SE
Rochester, MN 55904

Phone: 507-282-2667
Email: mlaplante@aol.com

President: Ms. Victoria Rutson
Michael LaPlante Section of Environmental Analysis
Case Control Unit
Secretary/ Treasurer: Finance Docket No. 33407
Mari Fleming Surface Transportation Board
1925 K Street, NW
Board Members: Washington, DC 20423-0001

Derrick Hansen
Phil LaPlante
Greg Dukart
Lynn Keeler

Trustees:
Don German
Nancy German
Don Flott
Don Chadbourn
Kathy Fritsche
Deb Dukart
Patrick Sheedy
Robert Callier

5/28/2005



Dear Ms. Rutson:

The Eastside Pioneers Neighborhood Association (ESPNA) has studied the Draft Supplemental Environmental Impact Statement (DSEIS) as prepared by the Section of Environmental Analysis (SEA) of the Surface Transportation Board (STB). We held a neighborhood meeting regarding this very important document and invited several local experts to provide more information and to answer questions. In light of the information compiled thus far, we are very concerned by the numerous shortcomings of the Draft Supplemental Environmental Impact Statement (DSEIS). Our neighborhood of about 1400 people is bisected by the Dakota, Minnesota and Eastern (DME) railroad corridor. We are the only neighborhood association in Rochester bisected by the main DME railroad corridor. We have been fighting for seven years, since 1998, to protect our neighborhood from the impact of the proposed DME Railroad's Powder River Basin expansion project. Uppermost in our minds is that typically open fields, industrial parks or crime-ridden ghettos are found near railroad corridors supporting rail traffic of this magnitude (upwards of 37 or more mile long unit coal trains). The inadequacy of the DSEIS not only jeopardizes the permanence of our neighborhood but it may also lead to a detrimental ripple effect throughout our world-class medical community.

The ESPNA neighborhood has a large pool of unique older affordable homes, ideal for those that live here, the elderly on fixed incomes, the disabled, the first-time homebuyers, and a diverse group of minorities. Many that moved here did so because the affordability of the homes allowed them the chance to buy a home, to raise a family and to live in a secure and peaceful setting. It is a unique, appealing neighborhood because we feel we have everything we need close by, work, downtown stores, a civic theatre and auditorium, four parks, two elementary schools, a swimming pool, a ball park, and bike paths.

There are a number of small businesses, located in the ESPNA. They range from hairstylists to daycare facilities, to construction, to hardware repair facilities, most of these are home-based businesses and are a credit to the hardworking neighbors that own and operate them.

The ESPNA is also lobbying to reestablish a senior citizens center at the Town Hall Estates located on East Center Street just off from the DME railroad corridor. The ESPNA was pleased that the Boys and Girls Club chose our association to locate their facility, it is

a good fit. Located in the heart of our neighborhood, at 1026 East Center Street, just a block or so away from the DME railroad corridor, a number of neighborhood children take advantage of their after-school and summer programs. We are even more excited by the possibility of a collaborative effort between Head-start and the Boys and Girls Club geared toward helping the neighborhood's disadvantaged children at an earlier age.

The ESPNA is a unique, affordable, blue collar neighborhood and as you can tell we like it here. That is why we have invested so much of our time, money and effort in this neighborhood. We are very concerned that we are in immediate danger of losing it all now due to the failure of the SEA to fully examine the court-ordered remanded points from the Eighth Circuit Court of Appeals regarding the environmental issues of horn noise, noise and vibration synergies, and air-quality. The STB has failed to comply with the law as required by the National Environmental Protection Act (NEPA) and the court order to take the required "hard look" analysis of the impacts from the proposed project and the alternatives that might be available to address those impacts. We are fully aware of the deficiencies inherent in the arguments present in the DSEIS against mitigation or prevention of horn noise. We are disappointed but not surprised by the errors of omission present in the DSEIS by the SEA's non-consideration of: a) the final rule from the Federal Railroad Administration (FRA) on quiet zones; b) a viable alternative DME route through Iowa for unit coal trains; and c) vital information from the 2000 Census data.

The ESPNA suggests that the SEA's poor performance on the DSEIS is indicative of the STB's ulterior motives, namely to push the DME railroad expansion project through at all costs. The STB has acknowledged the proposed DME expansion project could potentially have significant adverse environmental impacts on Rochester including horn and wayside noise and vibration, air quality etc.. Yet, in the recently released DSEIS, the SEA seems to attempt, through a very weak game of smoke and mirrors, semantic gymnastics, and convoluted rationalizations to wash its hands (thereby absolving the DME of any significant responsibility and financial obligations created as a result of their expansion project) of any meaningful solutions and mitigation measures.

Olmsted County has made a number of excellent remarks in their comments/reactions to the STB. The ESPNA has selected a few comments from Olmsted County as well as other sources that are of particular interest:

- 1) The SEA made remarks regarding air quality in the DSEIS to the effect that:
 - a) Little additional coal will be produced nationally or regionally if the DME project were built
 - b) Additional levels of air quality emissions will be less than 1%
 - c) Impact on air quality unknown
 - d) No additional air quality mitigation necessary

The ESPNA notes that the DME passed the business-related aspect of the EIS, it was said that they were going to be the 3rd major coal hauler out of the Powder River Basin. How does the finding of no additional coal production affect the need for the proposed project, its impact on other carriers or the financial viability of the proposed DME coal train expansion project?

- 2) The DSEIS discusses mitigation of horn noise by insulating buildings housing sensitive receptors and by constructing sound walls and discussing whistle-free or quiet zones. The DSEIS lays out several arguments that apply to any type of mitigation or horn noise prevention, including

- a) the STB has never ordered the type of mitigation being considered for horn noise before;
- b) many receptors will already receive mitigation for wayside noise;
- c) other interchange options would direct rail traffic elsewhere, so that anticipated noise levels would not be reached; and
- d) the two grade separations ordered for Rochester will reduce horn noise impacts anyway

The ESPNA notes that the proposed DME coal train expansion project is the most significant railroad construction project in one hundred years. The STB has never dealt with this type of project before, they deal mostly in railroad closings and mergers. It is in the very nature of this project to have a number of first time occurrences. For instance this was the first time ever, in the history of the STB, that a contested STB decision was remanded back to them, by a Circuit Court of Appeals for further consideration and analysis. Regarding the proposed mitigation the STB says it has never imposed...there is a first time for everything. The ESPNA also notes that, unless the project is rejected, or the unit coal train traffic is definitely diverted elsewhere, through less populated areas, then the situation would be such that mitigation would be in order here.

The ESPNA wonders just how many sensitive receptors in our neighborhood will actually receive any type of mitigation as there seems to be so many conditions, stipulations and threshold levels attached to their implementation. Noise mitigation should not be limited to just the sensitive receptors at the 70 dBA Ldn level of wayside noise, the sensitive receptors that are in the 65 dBA Ldn wayside noise level should receive some form of noise mitigation as well. The STB's parent organization, the U.S. Department of Transportation and many other Federal agencies, such as the Department of Housing and Urban Development (HUD) use the 65 dBA Ldn as the point at which noise levels become unacceptable.

The ESPNA is concerned that we could have unacceptable noise levels yet never reach SEA's elusive threshold. The DSEIS fails to ask or answer the questions at what levels of train traffic does mitigation kick in and what types of mitigation should be ordered at that level?

The ESPNA does not buy the contention that the two grade separations ordered for Rochester will reduce horn noise. The problem is finding the acceptable, advantageous intersections at which to place grade separations that would be effective in reducing horn noise. The spacing of the intersections along the DME railroad corridor are so close and the speed of the trains are such that horn noise areas overlap, thereby making it next to impossible to reduce horn noise by this method.

The ESPNA thinks it is interesting to note that the DSEIS acknowledges that sound insulation for affected structures (including replacing windows, adding insulation, and providing air conditioning) would be effective in mitigating horn noise. The SEA had to say this as the STB has ordered sound insulation to mitigate noise for structures affected by wayside noise. However, the SEA argues against ordering the DME to provide sound insulation for homes affected by horn noise alone saying that it could cost as much as \$4,000 per structure. The SEA says this would be too costly for the DME. The ESPNA asks is it fair to shift the burden of sound abatement mitigation from the project initiator, the DME, on to the affected people after destroying their homes and a life time of personal investment? It should be noted that studies show that with the increase in noise levels, a homeowner, could expect to lose as much as 10% of the value of their home. We stand to lose a lot more than \$4,000 if mitigation is not required. Naturally the SEA disputes concerns about noise impacts on property values. They rationalize that residential property values are based on a number of determinants (season of the year, economic trends, desirability of a location, proximity to amenities and proximity to rail lines) and that it is difficult to single out one as the greatest influence. They do state that "while some decline in property values

may occur as a result of increased train traffic, the SEA does not anticipate the decline would be significant.” However, the issue seems complex enough to warrant more investigation than just data drawn from the Draft Supplemental Environmental Impact Statement (DEIS) based on the sale of 7 homes in Brookings, South Dakota. It seems, the SEA, after pondering the issue of noise impacts on property values, seems to conclude in the FEIS, that it is just too complex for useful analysis and settles on the simpler solution based on the sale of just 7 homes in Brookings, South Dakota. It should be noted that a very useful body of research exists that covers the impact of noise on property values. Using statistical models it separates out determinants such as seasonality, economic trends, proximity to favorable and unfavorable locations, noise etc.. This statistical model does show that there is a significant relationship between noise and property values. It should be noted that other agencies within the U. S. Department of Transportation, SEA’s parent organization use this model in their environmental justice analysis.

- 3) The ESPNA is concerned about the negative impact the proposed DME coal train expansion project will have on our disadvantaged neighbors, the retired elderly person on a fixed income, who oftentimes is already burdened with increasing medical problems and bills, the disabled person who lives on a fixed income and more than likely has mounting health care costs as well, the first-time home buyer who more than likely is in a low-income job and has struggled to put together a realistic financial package and loan to buy their first home, the first step to building equity and a life time of investment, the minorities (Somalis, Hispanic, Asians, Middle-Easterners, African-Americans, etc.) that have come to Rochester and settled in affordable neighborhoods such as the ESPNA seeking a better life for themselves. Since the SEA raised the issue of burden of payment for noise mitigation on the DME, the ESPNA feels it has the right to raise the issue of environmental justice and the burden of payment for the loss in property values on our disadvantaged neighbors due to unmitigated noise resulting from DME’s coal train expansion project. It is interesting to note that Rochester is one of the fastest growing cities in the state, we have grown from 70,745 in 1990 to nearly 95,000 by most recent estimates. The 2000 census data indicates that the size of minority and economically sensitive populations (including the population of students eligible for free and reduced price lunch) have increased significantly in Rochester since 1990. The minority population in both Olmsted County and the city of Rochester was 2.6 times greater in 2000 than the 1990 minority population. The SEA used 1990 and in some cases 1989 data in determining economic impacts on environmental justice groups. The ESPNA feels that the SEA should re-examine their Environmental Justice Analysis taking into account the dramatically changed circumstances. The ESPNA also feels that the SEA should change its environmental justice methodology to more accurately determine the presence or non-presence of environmental justice groups. We suggest something to detect environmental justice groups in small neighborhoods such as the ESPNA, perhaps more on the Census Block Level Data rather than Census Block Group Level Data such as was done for the Bayport Loop, in Houston, Texas. We also suggest that the SEA reexamine their interpretation of guidance they received from the U.S. Environmental Protection Agency regarding detection of Environmental Justice groups in relatively affluent counties.
- 4) The ESPNA points to the SEA excuses for not installing sound walls to abate noise impacts as a prime example of rationalizations and failure to research alternatives.
 - a) The SEA makes the assertion that the effectiveness of sound walls will be uncertain along the DME corridor as there are too many openings due to intersections, thereby allowing sound to escape. If you look at the spacing of at-grade crossings along the corridor you will see that with one exception they are all pretty much two blocks apart. Yet the SEA contends that the Charter house, which is less than a block long will be able to effectively shield adjacent structures such as the expansive Methodist Hospital from noise impacts. So which is it?
 - b) If sound walls are so ineffective, why does the STB’s parent organization, the U.S. Department of

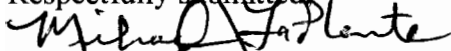
Transportation recommend using them along highway projects to cut down on highway noise?

c) The SEA's assertion that sound walls may attract graffiti, vandalism or may create a permanent visual component in neighborhoods is true but things can be done to offset these problems and they are certainly better than the alternative, which would be sound levels above 65dBA Ldn and loss of property values.

Our neighbors are frustrated, angry and scared, we are on the frontlines in the battle for our homes and our neighborhood. We feel as if our backs up against the wall. All we can see right now is a determined foe, the railroad and their supporting, so-called regulatory agency, the Surface Transportation Board (STB) getting ready to blow our neighborhood away. We will be the first to deal with the reality of the destruction to our neighborhood and to our lives. We will be the first to deal with the loud, thundering trains, and the sleepless nights. We will be the first to deal with the financial burdens. We are tired of the double-talk, the platitudes, the lip-service, the excuses and the rationalizations.

It is the hope of the ESPNA that the SEA would take the necessary hard look at the Eighth Circuit Court of Appeals remanded points to the STB regarding environmental impacts of increased horn noise, the relationship between vibration and horn noise, and the impact of increased coal consumption on air quality in the region served by the DME. The ESPNA asks that the SEA would, in light of further research and investigation, substantially augment and revise its Draft Supplemental Environmental Impact Statement (DSEIS). We would also ask that the SEA provide an adequate comment period for all concerned before proceeding on to a Final Supplemental Environmental Impact Statement.

Respectfully submitted,



Michael J. LaPlante

President

Eastside Pioneers Neighborhood Association